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Sessional paper No 52
Session of 1835,
Legislative Assembly
First Law.

R E P O R T

- of -

HONOURABLE MR. JUSTICE FISHER

- COMMISSIONER -

appointed

under The Public Inquiries Act

respecting

- the appointment and resignation of -

DANIEL McCARTHY

Police Magistrate -

PRESENTED TO THE LEGISLATIVE ASSEMBLY

BY COMMAND

H.C. Ross
PROVINCIAL SECRETARY





TO HIS HONOUR THE LIEUTENANT-GOVERNOR OF THE
PROVINCE OF ONTARIO: IN COUNCIL.

I, the Honourable Robert Grant Fisher, Justice of Appeal in the Supreme Court of Ontario, was appointed a Commissioner under and by virtue of Chapter 20, R.S.O. 1927, entitled The Public Inquiries Act, to

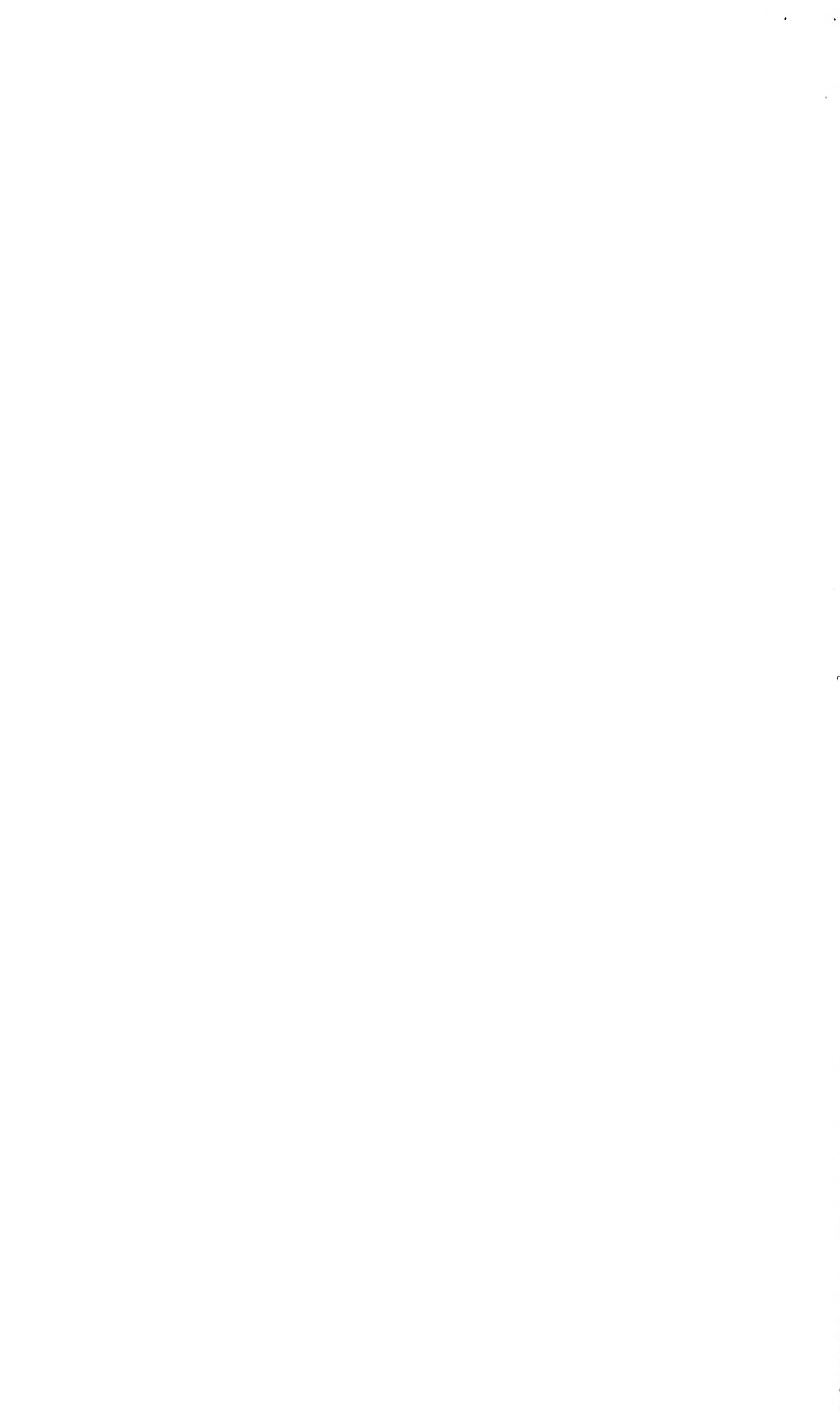
(1) Inquire into all matters, arrangements, agreements and all circumstances connected with, appertaining to, growing out of or incidental to the appointment, subsequent resignation of one Daniel McCaughrin, former Police Magistrate at Orillia, Ontario.

(2) And with restricting the generality of the foregoing, to particularly inquire into all matters, events, arrangements, agreements or suggested arrangements or agreements made or entered into by any former member of the Executive Council, or any other person or persons and all acts done and any steps taken by any and all persons in connection with, appertaining or incidental to or growing out of the resignation of the said Daniel McCaughrin,

and now have the honour to make my report:

(1) That pursuant to the Comission I caused subpoenas to be issued to different witnesses to appear before me at Osgoode Hall, on Tuesday the 28th day of August, 1934, at the hour of 10 a.m. and on that day and on the 29th and 30th days of August, 1934, I proceeded with the hearing of evidence and arguments.

(2) That the following witnesses attended and were examined before me, the Honourable William H. Price, former Attorney-General of the Province of Ontario, the Honourable William Finlayson, former Minister of Lands and Forests, Howard Gover, Daniel McCaughrin and Mr. Harvie. The evidence of Mr. Humphries and Mr. Dennison given at a previous inquiry before a Committee of the Legislature and contained in volume 68 of The Journals of the Legislative Assembly of Ontario was, by agreement of counsel, treated as evidence given before me and made part of the Record.



(3) That Mr. Springsteen and Mr. Martin represented the Crown; Mr. Greer, K.C., represented Mr. Price and Mr. Finlayson; Mr. Fowler represented Mr. Gover. Daniel McCaughrin and Mr. Harvie were not represented by counsel.

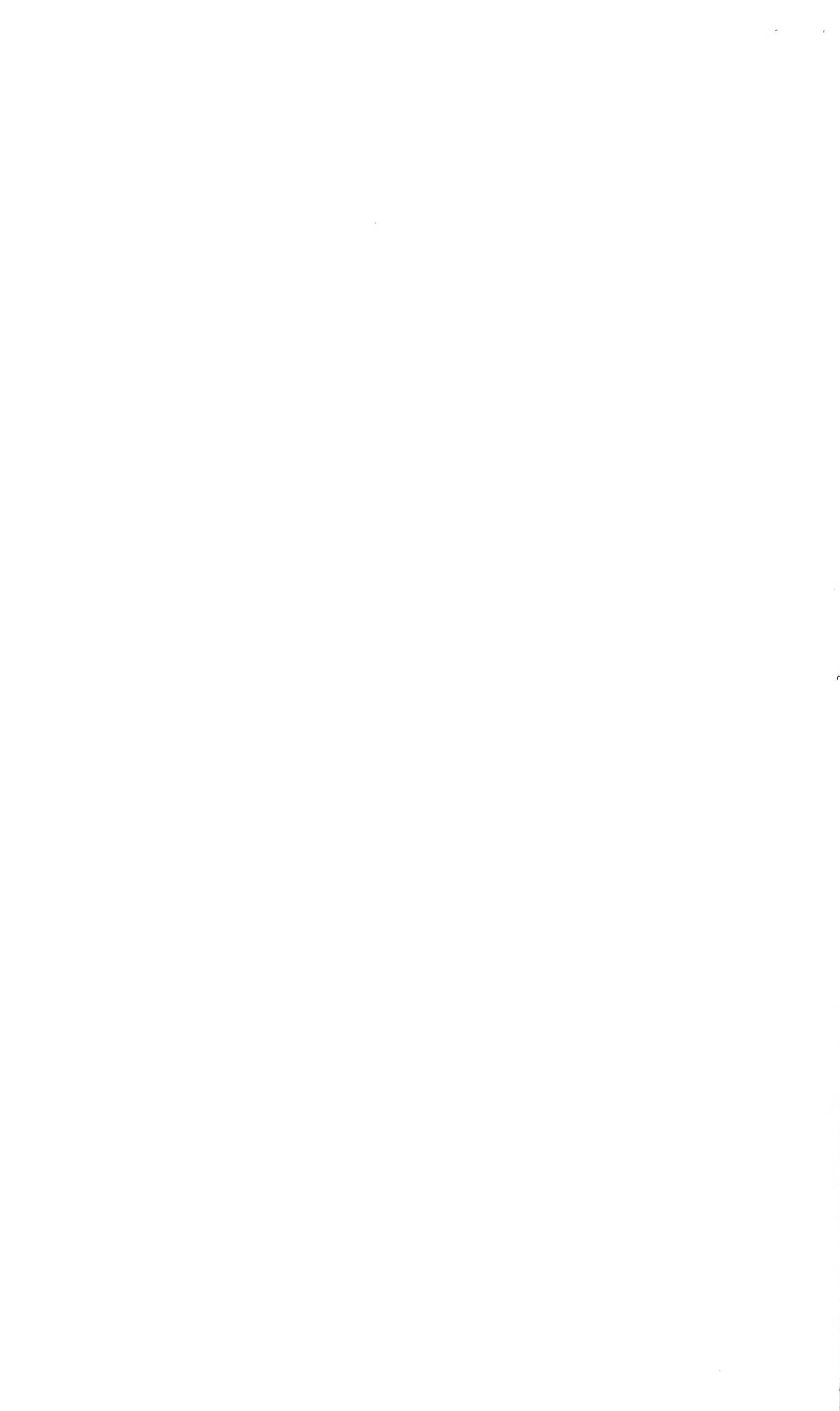
(4) That Daniel McCaughrin who had hitherto been a freight agent employed by the Canadian Pacific Railway Company at Orillia was appointed Police Magistrate at Orillia on the first day of June, 1927, with jurisdiction extending into certain townships in the Counties of Simcoe, Ontario and Victoria.

(5) That Daniel McCaughrin entered upon his duties as Magistrate and the evidence discloses the fact that as early as October 1928, and at various times down to the month of May 1933, complaints to the Attorney-General's Department and to Mr. Finlayson, emanating by resolutions from the Council of the Town of Orillia, from Mr. McGibbon, Crown Attorney for the County of Ontario, Mr. Tudhope, solicitor practising in Orillia, Mr. Boys, K.C., practising in the Town of Barrie and from various other persons were received.

(6) That in consequence of some of these complaints McCaughrin was deprived of his jurisdiction by Orders-in-Council in certain districts and at the time of his resignation he retained jurisdiction only in the Town of Orillia and several townships in the County of Simcoe.

(7) That main complaints were, that McCaughrin was inefficient from lack of capacity and legal knowledge to understand and properly conduct cases brought before him!

that Mr. Middleton and Mr. Denison (Inspectors) and Mr. Humphries representing the Attorney-General's Department, at various times made inquiries having reference to the complaints and were all of the opinion:



- (a) that McCaughrin was not a good magistrate;
- (b) that he had no legal ability;
- (c) that he was quarrelsome in Court

and his retirement was recommended!

that on several occasions Mr. Price and Mr. Finlayson had personal interviews with Mr. McCaughrin touching these complaints and suggested his retiring;

that McCaughrin requested he be given more time to see if he could improve and become more efficient in his position and that if he did not do so he would resign! Complaints did not cease to come in to Mr. Finlayson and to the Attorney-General's Department and McCaughrin, because of rumors he heard that there might be a change and he would be called upon to resign, on the 8th of November, 1933 wrote a letter to Attorney-General Price (Ex. 5). The following are short excerpts from the letter:

"It has recently been hinted to me that there may be a consolidation of some of the magistrates jurisdictions in Ontario such as Magistrate Gover's and mine".

"It has also been told me I have a good income from sources other than my magistrate's pay which is quite in error" . . .

and again:

"If there be any probabilities of a consolidation I would humbly ask you to if I be the unfortunate to reduce my pay from the Province or permit my remaining in the position until next midsummer as Mrs. McCaughrin has been an invalid since 1920 and I need all my earnings":

that following that letter Mr. Finlayson and McCaughrin met at a Remembrance Service November 11th, 1933, in the Y.M.C.A. building in Orillia and briefly what took place



on that day was, that if he did resign he would like to get something done for him as was done for a man named Cotter, (a former aged Crown Attorney) who had some years before been given compensation by his successor) and intimated to Finlayson on that occasion that he had met with losses on stocks of \$4000 and would like to get that sum; that Finlayson's reply was, "I do not know who would pay you the \$4,000" and McCaughrin then said he would take \$3000; and in parting Finlayson said to McCaughrin that he would have to resign as he had promised, and he would see if anything could be done by way of compensation;

that following this discussion Finlayson discussed the matter with the Attorney-General and Gover's name was mentioned as a probable successor and afterwards Finlayson telephoned to Gover and to McCaughrin and arranged for them to meet him at his office on the 25th of November; that on the 25th November they met ~~both these men~~ in his office ^{Finlayson} and ^{Mr.} asked them if they had agreed upon what Gover would or could pay, and it was finally agreed that Gover would pay \$2000 spread over a definite period, and an agreement was drawn up by Gover, with suggestions from Finlayson. The agreement was signed by Gover (Finlayson stating to McCaughrin it was not necessary for him to sign) and then McCaughrin's resignation was drawn up and signed by him (Ex. 19) addressed to the Attorney-General, which reads:

"I hereby tender my resignation to the office of Police Magistrate for the district and town of Orillia to become effective on the 31st day of December, 1933";

that it was agreed to leave the agreement and resignation with Mr. Finlayson and he was to bring the matter before the Attorney-General for his consideration;



that Finlayson by letter dated November 30th, 1933, (Exhibit 35) to Mr. Price enclosed McCaughrin's resignation to take effect at the end of the year. The following is an excerpt from the letter:

"As I explained to you this has been put in on the understanding that the office of Police Magistrate at Coldwater will be combined with the Orillia office and Mr. Howard Gover given the combined position. I am very glad to recommend to you that Mr. Howard Gover be given the combined position on the understanding that he moves to Orillia. This will reduce the number of magistrates in East Simcoe from four to three and I think is a move in the right direction.

"I hope it will be possible to accept Mr. McCaughrin's resignation and put the new appointment through at once."

that the agreement recites that McCaughrin "being about to resign the office of Police Magistrate of Orillia district and it being desired to provide a retiring allowance and there being no provision for such allowance and it being proposed to combine the Orillia and Coldwater jurisdictions Gover (the party of the first part) will provide a retiring allowance as follows." v.v.v.

that subsequently McCaughrin stated that he had turned the matter over in his mind, became shocked at what he had ~~done~~, and in a day or two went to his solicitor, Mr. Harvie and laid the matter before him and Mr. Harvie advised him to the effect that it was an improper and illegal transaction.

(28) that on December 2nd, 1933, McCaughrin wrote to Finlayson saying that he had been seriously thinking over the arrangement made in his office on November 25th in which Gover was to pay \$2000 and then refers to the conversation held in the Y.M.C.A. in which he reminds Finlayson that Finlayson told him that he thought he could arrange \$3000, and further stating that he had never received money that was not honestly earned, or violated the principles of citizenship and that he could not conscientiously



accept \$2000 to vacate his position, that he wished to retain it until April 1935 and asking for a return of his resignation and agreement!

; that Mr. Harvie in his evidence before me stated, McCaughrin called upon him, explained what had taken place and that he advised him it was, he thought an improper transaction and also that one of McCaughrin's complaints was, that he thought he was not getting sufficient money!

that certain telephone messages, and correspondence followed McCaughrin's letter to Finlayson, resulting in McCaughrin being invited to meet the Attorney-General, (Finlayson refusing to have anything further to do with the matter); that McCaughrin met the Attorney-General and the result of their conference was, that the Attorney-General informed McCaughrin that he intended to accept his resignation and to appoint Gover. Mr. Price swore that McCaughrin asked him that day to see if he could get him \$3000, and;

that on the 12th of December the Attorney-General formally accepted McCaughrin's resignation and appointed Gover to succeed him.

I have not pretended to incorporate all the details of what took place between the Attorney-General, Mr. Finlayson, Gover and McCaughrin, from early in November, 1933, down to and including the month of December, 1933, but the foregoing I think contains a fair reference of all the essential details about which I am to be concerned in this inquiry. I wish to observe that there were severe conflicts in the evidence given by Price, Finlayson, Gover and McCaughrin, and to state that I do not hesitate to say, I prefer to believe the evidence of Price, Finlayson and Gover, to that of McCaughrin; that Gover throughout his evidence, impressed me as telling the whole truth of how and when he was brought into this matter and what was agreed

upon; that Gover made it perfectly clear to Finlayson and McCaughrin throughout that anything he was willing to pay - in case of McCaughrin's alleged financial embarrassments - was not in consideration of McCaughrin's resignation and his being appointed to succeed him, as all that was a matter to be arranged and settled by the Provincial authorities; that Gover swore, and I believe him, that he specially asked Mr. Finlayson if what he was doing to assist McCaughrin was legal, and was assured by Mr. Finlayson that it was, and Mr. Finlayson corroborated Gover in this particular.

(9) Both Mr. Price and Mr. Finlayson frankly admitted that they knew that McCaughrin was unfitted for the office for a long time and acknowledged that they were derelict in their duty in not removing him and that their reasons for not acting more promptly were, that McCaughrin was a returned soldier, was backed by the War Veterans, his pleading for a chance to improve, his financial condition and a sick wife.

I beg to report as the result of my inquiry.

(1) That ~~I can find~~ no evidence to support a finding that there was a sale or an agreement to sell this particular office by anyone to anyone or that there was any agreement to purchase this office or to obtain the resignation of McCaughrin, but on the contrary the evidence supports a finding, that the Attorney-General's Department had definitely come to the conclusion in November, 1933, that McCaughrin must be removed because of his inefficiency and lack of ability to discharge the duties of his office, and what was in the minds of everyone including McCaughrin, was, to secure from Gover in the event of his appointment, some remuneration to McCaughrin in case of his alleged financial position.

(2) That the services of McCaughrin as a Magistrate should, within a reasonable time after knowledge of his incompetency was known to the Attorney-General's Department, have been dispensed with and a successor appointed, and because of the long delay, the Department must be charged with a failure to discharge that particular duty;

(3) That all the trouble which has arisen and given rise to this inquiry is due to the fact that Gover was not called as a witness before the Legislative Committee of the former Administration. The Attorney-General, without the evidence of Gover, had every reason to think ^{as} ~~that~~ reasonable grounds for believing, that trafficking in this particular office had taken place and was in my view amply justified in instituting this inquiry.

(4) That it is of the utmost importance in the conduct of affairs of state to remember that not only actual trafficking in offices but even the suspicion or appearance of such an offence must be avoided if the confidence of the public in the purity of the Administration of Justice is to be retained.

Before parting with my duties I would like, with great respect, to state that the recent changes which I understand have been made by the Attorney-General to appoint and pay fixed salaries only to those who have ability to discharge the office of a Magistrate will have the commendation of all those connected with the administration of justice, and at the same time ensure to those whose cases are to be heard in the Courts that they will receive a dignified and fair trial according to law.

All of which is respectfully submitted.



Commissioner.



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